

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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LPA No.366 of 2020 (O&M)
Date of Decision: April 22nd, 2022

M/s Capital Engineers, Faridabad

...Appellant

Versus

Presiding Officer, Industrial Tribunal Cum Labour Court-III, Faridabad
and another

...Respondents

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present: Ms. Sukriti Gupta, Advocate
for Mr. Sandeep Vermani, Advocate
for the appellant.

AUGUSTINE GEORGE MASIH, J.

This appeal has been preferred by the appellant, who had filed a writ petition challenging the award dated 20.07.2018 (Annexure P-8) passed by the Presiding Officer, Industrial Tribunal-cum-Labour Court-III, Faridabad (hereinafter referred to as 'the Labour Court') ordering reinstatement of respondent No.2-workman with continuity of service with 50% back wages with effect from the date of demand notice by taking into account his last drawn salary as ₹10,500/- per month, which was dismissed by the learned Single Judge.

2. Learned counsel for the appellant has asserted that the learned Single Judge has failed to appreciate that after the settlement entered into between the parties on 11.06.2015 before the Assistant Labour Commissioner, Circle-3, Faridabad, the workman was taken back on duty on 15.06.2015. He continued in service and, thereafter, left service on 13.07.2015 on his own, whereafter the appellant-company served a notice/letter dated 22.07.2015 calling upon respondent No.2-workman to explain his absence from duty but

instead a demand notice dated 15.07.2015 was served by the workman upon the appellant-company, which shows that to come out of the show cause notice, respondent No.2-workman served the said notice upon the appellant. Her further contention is that after having remained unauthorizedly absent from duty and despite show cause notice having been issued upon the appellant, no reply was filed, rather he chose to voluntarily remain absent from duty. She, therefore, contends that the order passed by the Labour Court cannot sustain and deserves to be set aside. In any case, it is asserted by the counsel for the appellant that the appellant is willing to pay a lump sum amount to respondent No.2.

3. We have considered the submissions made by the counsel for the appellant and with her assistance, we have gone through the impugned order passed by the learned Single Judge as also the pleadings and the award of the Labour Court but do not find the contentions as raised by the counsel for the appellant to be correct and acceptable.

4. The sequence of events as is apparent from the facts of the case is that respondent No.2-workman was appointed as Tool Room Dye Fitter on 03.05.2010 on monthly salary of ₹10,500/-. His work and conduct was found to be satisfactory and there were no complaint against him. The workman, on 10.10.2014, met with an accident in which he sustained fracture on his left hand. He was admitted to a private hospital by the appellant-company and he received treatment from there. Fitness certificate was issued by the ESI Hospital on 23.12.2014 and thereafter he was taken back on duty on 24.12.2014. As per the legal advice, with effect from 11.12.2015, the appellant-company refused to take him back on duty without any order in writing. Waiting for appropriate orders or taking him

back in service when did not fructify, a demand notice dated 06.04.2015 was served upon the appellant by the workman, which was also supplied to the Assistant Labour Commissioner, Circle-3, Faridabad. It is then that a settlement had taken place and respondent No.2-workman claims that he was taken back on duty by the appellant-company on 15.06.2015 on monthly salary of ₹6,200/- instead of ₹10,500/- drawn by him prior to his termination. Besides this, he has not earned wages for the month of June 2015 and 13 days of July 2015. Juniors to him are continuing in service, whereas his services have been terminated and that too without granting him any compensation or following the provisions of Section 25-F and violating Section 25-G of the Industrial Disputes Act as well. A demand notice dated 15.07.2015 was thereafter served by the workman. Upon having received that demand notice, it appears that as a counter blast thereto, the appellant-management served a notice/letter dated 22.07.2015 upon the workman seeking his explanation alleging him to be absent from duty which sequence of events speak for itself that in fact it is an afterthought and a belated action on the part of the management to counter the demand notice served by the workman on 15.07.2015. It is an admitted position that no inquiry with respect to the show cause notice sent to respondent No.2 was conducted for proving the willful absence on the part of the workman or for abandonment of job nor was any offer for rejoining was made to the workman by the appellant-company. The award passed by the Labour Court, therefore, cannot be faulted with as none of the mandatory provisions of the Industrial Disputes Act had been followed by the appellant-company. Having violated the provisions of the Industrial Disputes Act and in the given facts and circumstances of the present case, the award passed by the

Labour Court is in accordance with law and fully justified. Even the relief of reinstatement with continuity of service and 50% back wages is equitable and just, which do not call for any interference in the present appeal.

5. The appeal being devoid of merit, therefore, stands dismissed.

6. In the light of dismissal of the appeal, pending applications stand disposed of as infructuous.

(AUGUSTINE GEORGE MASIH)
JUDGE

April 22nd, 2022
Puneet

(JASJIT SINGH BEDI)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No